

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Sprint PCS and AT&T)	WT Docket No. 01-316
Petitions for Declaratory Rulings)	
on CMRS Access Charge Issues)	

REPLY COMMENTS OF NORTHCOAST COMMUNICATIONS, LLC

Pursuant to the Public Notice¹ seeking comments on the Sprint PCS and AT&T Petitions for Declaratory Ruling, Northcoast Communications, LLC (“Northcoast”),² by its undersigned attorneys, hereby files its reply comments. Northcoast supports the Sprint PCS Petition and agrees that nothing prohibits Sprint PCS or any commercial mobile radio service (“CMRS”) provider from charging interexchange carriers (“IXCs”) for the exchange access services provided for the IXCs’ customers. While AT&T’s arguments are grounded primarily in policy, the matter of law presented to the Commission requires a finding that Sprint PCS is entitled to exchange access charges. Further, AT&T’s policy arguments are based on faulty assumptions that are not consistent with the facts.

Northcoast is a PCS provider, currently serving Cleveland and Northern Ohio. Northcoast is also a relatively new entrant to the field of CMRS service. Northcoast’s business plan is to make its CMRS service the complete substitute for an end user’s local exchange service. Unlike any other PCS provider, Northcoast offers unlimited local calling throughout the

¹ Public Notice, “Sprint PCS and AT&T File Petitions for Declaratory Ruling on CMRS Access Charge Issues,” DA 01-2618 (rel. Nov. 8, 2001).

² The company operates under the name Northcoast PCS.

Northcoast service area for a fixed monthly rate. Just like customers of incumbent LECs, Northcoast customers are able to receive an unlimited number of inbound long distance calls in their basic monthly fee. Northcoast customers use prepaid long distance calling cards to originate long distance traffic to locations outside the Northcoast service area. For the reasons stated below, the Commission should conclude that Sprint PCS and other CMRS providers are entitled to require payment of exchange access charges by IXC's and not further regulate the highly competitive market for CMRS services. The proper forum for the Commission to address broader policy issues related to exchange access charges is in its existing *Unified Intercarrier Compensation* proceeding.³

ARGUMENT

I. NOTHING PROHIBITS SPRINT PCS FROM COLLECTING EXCHANGE ACCESS CHARGES FROM INTEREXCHANGE CARRIERS

This proceeding is the result of a primary jurisdiction referral from the United States District Court for the Western District of Missouri. This proceeding is not "Phase One" of the *Unified Intercarrier Compensation* proceeding.⁴ The Commission should not confuse its legal mandate in this proceeding with an opportunity to establish Commission policy outside the parameters of the *Unified Intercarrier Compensation* proceeding. The Commission was instructed by the United States District Court to determine, as a legal matter, "whether Sprint may charge AT&T access fees for the use of the Sprint PCS network, and, if so, what rate may reasonably be charged for such services."⁵

³ *In re Developing a Unified Intercarrier Compensation Regime*, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. Apr. 27, 2001) (the "*Unified Intercarrier Compensation*" proceeding).

⁴ *Id.*

⁵ *Sprint Spectrum L.P. v. AT&T Corp.*, Case No. 00-0973-CV-W-5, Order, at 11 (W.D.

The answer is rather simple. Sprint PCS provides exchange access as that term is defined in the Telecommunications Act of 1996. Exchange access is “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.”⁶ Section 69.5 of the Commission’s rules requires IXC’s to pay exchange access charges for the use of “local exchange switching facilities[.]”⁷ The Commission has previously ruled that CMRS carriers provide, at a minimum, “comparable service” to telephone exchange service.⁸ CMRS carriers offer access to telephone exchange services when they terminate traffic handed to them by interexchange carriers.⁹ It is clear that IXC’s owe access charges to CMRS providers under 47 C.F.R. § 69.5.

Further, there is no federal rule or statute that distinguishes between exchange access provided by CMRS carriers and exchange access provided by local exchange carriers. Nor is there a federal rule or statute that prohibits Sprint PCS from being compensated for providing exchange access services. In fact, the Commission has previously recognized that CMRS carriers are entitled to just and reasonable compensation for their provision of access.¹⁰

Mo., July 24, 2001). A copy of the Order was attached to the Sprint PCS Petition for Declaratory Ruling.

⁶ 47 U.S.C. § 153(16).

⁷ 47 C.F.R. § 69.5.

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev’d in part, aff’d in part, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) (“*Local Competition Order*”) at ¶ 1013.

⁹ *See Local Competition Order* ¶¶ 1012-1015.

¹⁰ *CMRS Equal Access/Interconnection*, 9 FCC Rcd 5408, 5447 ¶ 83 (1994).

AT&T quotes language from the *LEC/CMRS Interconnection NPRM* to support its argument that there is no rule allowing CMRS carriers to collect exchange access charges.¹¹ All that the FCC said in that decision was that there was no rule regarding access charges for CMRS carriers. Thus, the quotation has equal force in support of the argument that there is no rule prohibiting CMRS carriers from collecting access charges either. There simply is no rule applicable to this situation that bars the relief sought by Sprint PCS.

There is no legal basis for the Commission to conclude that exchange access service provided by a CMRS carrier is not eligible for exchange access charges paid by IXC's. If the Commission wishes to establish new law on the subject, the Commission already has one proceeding devoted to the issue of reform of intercarrier compensation regimes. Until a new rule is promulgated in the *Unified Intercarrier Compensation* proceeding, the Commission's existing rules and regulations govern this dispute, and no current rule or regulation prohibits Sprint PCS from collecting exchange access charges from AT&T.

II. AT&T'S POLICY ARGUMENTS ARE MISGUIDED AND ARE BASED ON UNSUPPORTED ASSUMPTIONS

AT&T makes a number of policy arguments in support of its claim that it does not owe exchange access charges to Sprint PCS.¹² As stated above, as a legal matter, exchange access services provided by Sprint PCS are treated no differently than exchange access services provided by any other carrier. All forms of exchange access services -- whether provided by local exchange carriers or wireless CMRS providers -- are eligible for payment of exchange access charges by IXC's. Whatever value AT&T's policy arguments may have, they should be

¹¹ Comments of AT&T Corp. on Sprint PCS's Petition for Declaratory Ruling ("AT&T Comments") at 12, *citing Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 5020 ¶ 115 (1996).

¹² AT&T Comments at 18-26.

considered in the *Unified Intercarrier Compensation* proceeding, and not in this primary jurisdiction referral proceeding. Moreover, AT&T's policy arguments are premised on faulty assumptions that are not consistent with the facts.

1. There is no prevailing industry standard to handle terminating access on a bill-and-keep basis

AT&T first alleges that bill-and-keep is the prevailing intercarrier compensation mechanism between CMRS carriers and IXC's.¹³ AT&T claims this is a "longstanding practice" that bars Sprint PCS from charging AT&T for exchange access services.¹⁴ The comments filed in this proceeding indicate otherwise. The largest CMRS carriers, by subscriber base, are Verizon Wireless, Cingular Wireless, AT&T Wireless, Sprint PCS, and Nextel.¹⁵ Together, these five carriers represent 71% of the CMRS market. Any prevailing industry arrangements must be the arrangement between these carriers and IXC's, and four of these five assert in this proceeding that bill-and-keep is not the prevailing industry arrangement.¹⁶ Therefore, because there is no industry-wide standard, each CMRS provider is free to decide whether it wishes to charge IXC's for terminating exchange access services.

Contrary to AT&T's assertions, the fact that CMRS carriers have not billed IXC's for terminating access is attributable to factors other than an industry-wide agreement that the CMRS carrier will collect its terminating costs from its own customer. Nextel points out that

¹³ *Id.* at 18.

¹⁴ *Id.* at 19.

¹⁵ Legg Mason Equity Research, Industry Analysis, 1Q 2001, "The Wireless Industry Scorecard," Exhibit 8. The market shares are Verizon Wireless (23.8%), Cingular Wireless (18.0%), AT&T Wireless (13.8%), Sprint PCS (9.1%), and Nextel (6.3%).

¹⁶ The exception is AT&T Wireless, an affiliate of AT&T, which did not submit comments in this proceeding.

CMRS subscriber reluctance to answer inbound calls has been countered by marketing packages that allow subscribers to buy buckets of minutes.¹⁷ Further, Nextel describes how CMRS carriers have been unable to generate billing records necessary to charge IXC's for terminating access.¹⁸

Salmon PCS also explains in great detail why CMRS carriers have not billed IXC's for access charges previously.¹⁹ To the extent there is any prevailing industry arrangement between CMRS carriers and IXC's, it is that CMRS carriers have postponed billing for terminating access charges because they have not yet implemented the signaling, recording, and billing systems necessary to properly bill IXC's.²⁰

2. Bill-and-keep in the context of CMRS-IXC interconnection is inconsistent with Commission precedent

AT&T urges the Commission to require CMRS carriers to provide exchange access to IXC's on a bill-and-keep basis.²¹ Such a result would be inconsistent with the Commission's understanding of bill-and-keep. Implicit in any bill-and-keep compensation arrangement is a balanced exchange of traffic. As the Commission has already found, bill-and-keep may be

¹⁷ Nextel Comments at 3.

¹⁸ *Id.*

¹⁹ Salmon PCS Comments at 7-9. *See also* Verizon Wireless Comments at 6-7 ("CMRS providers have had to resolve a variety of technical and administrative issues to be able to bill IXC's.")

²⁰ The fact that Sprint PCS, Verizon Wireless, Western Wireless are now billing AT&T for terminating access demonstrates that some CMRS providers now have this capability. Sprint PCS Petition for Declaratory Ruling at 5.

²¹ AT&T Comments at 1.

imposed on carriers only if the volume of traffic exchanged between two carriers is roughly balanced.²² That condition would almost never arise for two reasons.

First, as an IXC, AT&T terminates little, if any, traffic. Virtually all traffic that it terminates is handed off to a local exchange carrier. Therefore, the vast majority of traffic that would be sent to AT&T by Sprint PCS would be terminated by another carrier. Second, Sprint PCS has no obligation to provide equal access to AT&T in order for Sprint PCS customers to originate traffic for AT&T to transport.²³ As a result of these two facts, traffic between Sprint PCS and AT&T will always be out of balance. Because traffic between Sprint PCS and AT&T will always be out of balance, bill-and-keep is an inappropriate intercarrier compensation mechanism under the Commission's own precedent.

3. Sprint PCS's exchange access charges would not require pervasive regulation

AT&T also alleges that allowing CMRS carriers to bill IXCs for terminating access charges would trigger pervasive regulation of CMRS access rates.²⁴ To the contrary, there would be no need for the Commission to regulate CMRS access charges pervasively, if at all. CMRS carriers are aware of the Commission's ruling in the *CLEC Access Charge Order*.²⁵ They are

²² *Local Competition Order* at ¶ 1098.

²³ 47 U.S.C. § 332(c)(8).

²⁴ AT&T Petition for Declaratory Ruling at 3.

²⁵ *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-262, FCC 01-146 (rel. Apr. 27, 2001) ("*CLEC Access Charge Order*"). It is arguable that the scope of the *CLEC Access Charge Order* includes exchange access provided by CMRS carriers. New rule 61.26(a)(1) of Part 69 defines a "CLEC" as "a provider of interstate exchange access services that does not fall within the definition of 'incumbent local exchange carrier' in 47 U.S.C. § 251(h)." Section 251(h) excludes all CMRS carriers because none of them were members of the exchange carrier association pursuant to Section 69.601(b) of the Commission's rules. Hence, the definition of "CLEC" could be read to include CMRS carriers for the purposes of Part 69, making them subject to the benchmark restrictions in the *CLEC*

aware of the Commission's concerns regarding market power over terminating access. A wise CMRS carrier would price its terminating access charges to fit within the Commission's regulatory structure for CLECs. If not, as Nextel explains, AT&T's concerns regarding excessive CMRS access charges may be addressed in a Section 208 complaint to the Commission.²⁶ Thus, Commission intervention would be necessary only to the extent that a CMRS carrier felt that the likelihood of prevailing before the Commission in a complaint proceeding was worth charging an exchange access rate in excess of the benchmark rates established in the *CLEC Access Charge Order*.

4. Sprint would receive no "windfall" from access charges

AT&T also alleges that because Sprint PSC collects "airtime" charges from its customers, it would receive a "windfall" if AT&T were to pay Sprint PCS terminating access charges.²⁷ The argument is a canard. First, as Sprint PCS and other carriers recognize, AT&T is the beneficiary of the "windfall" of not paying CMRS carriers access charges. No carrier, including AT&T, identified a pricing plan offered by AT&T that provided a discount for calls to CMRS subscribers to reflect the fact that AT&T had no terminating costs. The fact that subscribers to some CMRS providers presently must pay their CMRS provider for terminating costs on inbound calls reflects a subsidy from CMRS subscribers to AT&T's long distance subscribers.

Access Charge Order as of its effective date.

²⁶ Nextel Comments at 5.

²⁷ AT&T Comments at 22.

Second, AT&T recognizes that the CMRS market is highly competitive.²⁸ Any “windfall” received by Sprint PCS or any other CMRS provider would evaporate under the slightest competitive pricing pressure. If there are any excesses in the prices that CMRS carriers charge their subscribers, which would be reflected in any “windfall,” competition will squeeze them out.

The Commission may resolve this matter under existing Commission rules and regulations without resort to the policy concerns advanced by AT&T. To the extent such policy concerns have any merit, they should be considered in the *Unified Intercarrier Compensation* proceeding.

III. CONCLUSION

For the foregoing reasons, there is no current federal statute or rule prohibiting Sprint PCS from collecting exchange access charges from AT&T or any other IXC. Exchange access services provided by Sprint PCS should be treated the same as exchange access services provided by local exchange carriers. Therefore, the Commission should grant Sprint PCS the relief it seeks.

Respectfully submitted,

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²⁸ *Id.* at 10.